

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY  
RE: FINAL DESIGNATION OF REDEVELOPER FOR PARCELS  
1B, 1B<sup>1</sup>, 2, 2B, 2B<sup>1</sup> and 2C AND OTHER MATTERS  
REGARDING THE BOSTON NAVAL SHIPYARD AT CHARLESTOWN  
CHARLESTOWN URBAN RENEWAL AREA  
PROJECT NO. MASS. R-55

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WHEREAS, the Authority has amended the Charlestown Urban Renewal Plan so as to include within the Project Area the former Boston Naval Shipyard at Charlestown; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects including those prohibiting discrimination because of race, color, sex, religion or national origin; and

WHEREAS, the Authority is cognizant of Chapter 30, Sections 61 and 62 of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment; and

WHEREAS, the Authority has committed itself to the redevelopment of the Boston Naval Shipyard at Charlestown and has completed a reuse plan for the Shipyard; and

WHEREAS, Immobiliare New England has expressed interest in and has submitted a satisfactory proposal for development of portions of the Shipyard and has been tentatively designated as Developer and now requests a final designation for Parcels 1B, 1B<sup>1</sup>, 2A, 2B, 2B<sup>1</sup>, and 2C.

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That Immobiliare New England, a Massachusetts joint venture of Immobiliare Boston, Inc., a Massachusetts corporation and Canopus, Inc., be and is hereby finally designated as Redeveloper of Parcels 1B, 1B<sup>1</sup>, 2A, 2B, 2B<sup>1</sup> and 2C in the navy yard portion of the Charlestown Urban Renewal Area.
2. That it is hereby determined that the Immobiliare New England possesses the qualifications necessary to develop the land in accordance with the Urban Renewal Plan for the Project Area, and has produced a feasible development plan.
3. That disposal of Parcels 1A, 1B, 1B<sup>1</sup>, 1C, 2A, 2B, 2B<sup>1</sup>, 2C, 3A, 3B, 3B<sup>1</sup>, 3C, 3C<sup>1</sup>, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 4A, 4B, 4C, 4D, 4E, 5 and 6 by negotiation is the appropriate method of making the land available for redevelopment and the disposition of residential parcels for a minimum of approximately One Million Two Hundred Thousand (\$1,200,000.00) Dollars represents a fair estimate of the fair market value of said parcels.

4. That the Director is hereby authorized for and in behalf of the Boston Redevelopment Authority to execute and deliver a Deed conveying Parcels 1B, 1B<sup>1</sup>, 2A, 2B, 2B<sup>1</sup>, and 2C to the Immobiliare New England, said document to be in the Authority's usual form.
5. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105 (E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement for Public Disclosure". (Federal Form H-6004)

Agreement

between

BOSTON REDEVELOPMENT AUTHORITY

and

IMMOBILIARE NEW ENGLAND

(date)

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AGREEMENT made as of this \_\_\_\_ day of \_\_\_\_\_, 1978 by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts ("the Authority"), and Immobiliare New England ("Developer"), a Massachusetts joint venture of Immobiliare Boston, Inc., a Massachusetts corporation and Canopus, Inc., a Delaware corporation.

WHEREAS, with the assistance of the state and city governments, the Authority is carrying out the Charlestown Urban Renewal Plan pursuant to the Charlestown Urban Renewal Plan approved by the Authority on March 25, 1965, by the Boston City Council on June 7, 1965, by the Mayor of the City of Boston on June 9, 1965, by the Massachusetts Department of Community Affairs on July 6, 1965, by the United States Department of Housing and Urban Development on November 19, 1965 and recorded at Suffolk County Registry of Deeds, Book\_\_\_\_, page \_\_\_\_, as amended to include the Boston Naval Shipyard by the Authority on July 19, 1976, by the Boston City Council on August 2, 1976, by the Mayor of the City of Boston on December 6, 1976 by the Massachusetts Department of Community Affairs on January 28, 1977, and recorded with said Deeds, Book \_\_\_\_, page \_\_\_\_, (the Plan) which is incorporated herein by reference, the aforesaid being all necessary or appropriate approvals or proclamations to

enable the City of Boston (the "City") and the Authority to carry out such Urban Renewal Plan;

WHEREAS, the Authority and Developer desire to carry out a phased mixed-use development on land, more particularly described below; at Boston Naval Shipyard (as hereinafter defined, "Project");

WHEREAS, the Project will be located on 27 parcels of land (Parcels 1A, B, B<sup>1</sup> and C, 2A, B, B<sup>1</sup> and C, 3A-J, 4A-E, 5 and 6) and will have access through other land of the Authority or others, all as shown on the plan annexed hereto and marked Exhibit A;

WHEREAS, the City and the Authority have entered into the Cooperation Agreement annexed hereto and marked Exhibit B and pursuant to which the City and the Authority have agreed to take certain actions in furtherance of the Charlestown Urban Renewal Plan;

WHEREAS, certain public improvements are to be constructed by the Authority incident to the Project, and certain agreements are to be entered into by the Authority, also incident to the Project;

WHEREAS, Developer has expended considerable funds in planning the Project and will in the course of the development thereof expend up to \$100,000,000 in connection with the completion of the Project;

WHEREAS, the Authority has determined that the Project and the aforesaid public improvements are in the best interests of the City and the public good and welfare;

WHEREAS, the Project area is presently owned by the United States of America, acting through the General Services Administration, and the land through which access is to be granted is or will be owned by the Authority and the United States of America acting through the aforesaid General Services Administration and the Department of the Interior;

WHEREAS, the Authority has entered into agreements with the United States of America General Services Administration to acquire the Buy Parcel, including the Project, and the land through which access to the Project will be granted in perpetuity, copies of which agreements are annexed as Exhibits C and D, respectively;

WHEREAS, the Authority has entered into an agreement with the United States of America, National Park Service with respect

to access to the Project and other land, a copy of which is attached hereto as Exhibit E; and

WHEREAS, the Authority and Developer are entering into this Agreement in reliance upon their respective undertakings and obligations hereunder,

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I

### DEFINITIONS

For purposes of this Agreement:

- |                    |   |
|--------------------|---|
| Access -           | The easements and other rights granted or reserved to Developer for pedestrian and vehicular access, and for installation and maintenance of utilities, to the Project Area or parts thereof. |
| Acquisition Date - | The date of acquisition of a phase, as ultimately established with reference to the projected Acquisition Date and the possible extensions thereto defined to herein.                         |
| Buy Parcel -       | The land described as _____ in Exhibit _____ hereto being all of the Project Area plus parcel 6 the Industrial site.  |

Boston Naval Shipyard - See "Navy Yard"

Cooperative Agreement - Exhibit \_\_ hereto

Code - The Boston Zoning Code

Developer - Immobiliare New England and those successors, assigns and transferees permitted by the terms hereof.

Director of the Authority - The Chief Executive Officer of Boston Development Authority; the officer holding the equivalent position to that now held by Robert F. Walsh.

Final Designation - As to each Phase hereof, the Authority's determination that the terms and conditions hereof have been met.

Historic Monument Parcel - the land shown as \_\_\_\_\_ on Exhibit \_\_\_\_.

Hotel Site - The Land, as to which no Development Program has yet been established, shown as Parcel 5 on Exhibit \_\_\_\_.

Industrial Site - The Land shown as \_\_\_\_\_ on Exhibit \_\_\_\_.

Institutional Lender - A commercial bank, trust company, mutual savings bank, savings and loan association, life insurance company, pension trust fund, mortgage or real estate investment trust having a minimum capital and surplus of twenty-five million dollars (\$25,000,000) or any other financial institution commonly known as an institutional lender.

Mortgagee - Any Institutional Lender to whom Developer has granted a mortgage of all or any part of the Project Area.

Navy Yard Naval Shipyard - The entire area commonly known as Charlestown Navy Yard, previously occupied by the United States Navy.

Notes - The obligations of the Authority to be issued in substantially the form shown as Exhibit \_\_\_\_.

Parcel - Any individual parcel governed by the terms hereof, more specifically defined on Exhibit \_\_\_\_.

Phase \_\_\_\_ - Any discrete stage of the development. See Exhibit J for a more particular description of the Phases.

Projected Acquisition Date - The Date established herein for acquisition of any phase of the Project, which date is subject to extension in some cases as provided herein.

Project - All or any part of the development contemplated hereby.

Project Area - The area described as \_\_\_\_\_ on Exhibit \_\_, including all phases and the Hotel Site.

Public Improvements - The work to be done by the Authority and the City, more particularly described on Exhibit \_\_\_\_.

Recreational Parcel - The land described as " \_\_\_\_\_ " on Exhibit \_\_ hereto.

Shipyard Park - The public park to be built by the Authority on the Recreational Parcel.

"Townhouses" - Groups or rows of attached single family residences.

## ARTICLE II

### ACQUISITION AND SALE OF LAND

2.01 Land Acquisition. The Authority will acquire in fee simple absolute (a) the Buy Parcel, including the Project Area, and (b) the land over which the Access is to be granted, pursuant to Exhibits C, D and E. The Authority hereby agrees, subject to the terms hereof, to take all steps and execute any and all documents necessary or appropriate to accomplish such acquisition.

The Authority has already acquired the Recreational Parcel shown on the plan entitled " \_\_\_\_\_ " by \_\_\_\_\_, a copy of which is attached hereto as Exhibit F. The Authority will acquire the balance of the Project, the Access, and the balance of the Naval Shipyard except the National Park Parcel, simultaneously with Developer's purchase of the Bonds as described in Section 2.02.

2.02 Purchase of Authority Notes; Use of Proceeds.

Pursuant to M.G.L. Ch. 121B, §15 and other appropriate powers, the Authority shall issue its Promissory Notes in the aggregate principal amount of One Million Seven Hundred Forty Thousand Dollars (\$1,740,000) and Developer shall acquire the same in accordance with and subject to the terms and conditions hereof.

The Notes shall be in the form attached hereto as Exhibit G, and shall be secured by a first mortgage on the Buy Parcel in the form attached hereto as Exhibit H.

Upon receipt of the proceeds of sale thereof, the Authority shall simultaneously apply the same toward the purchase of the Project Area from the United States of America by quitclaim deed conveying title reasonably satisfactory to counsel for Developer. No other use shall be made of the proceeds of the sale of the Notes.

Developer's obligation to purchase the Notes shall be subject to the following conditions:

1. All conditions set forth herein with respect to Developer's acquisition of Phase 1 must have been satisfied, and the Authority must have indicated in writing that it will immediately convey Phase 1 to the Developer. It is intended that such transaction take place simultaneously with the purchase of the Notes by Developer and the purchase of the Project Area by the Authority and the granting of the Mortgage contemplated hereby.

2. Developer shall have received the opinion of recognized bond counsel for the Authority that the Notes and the mortgage securing the same are the duly and validly issued obligations of the Authority, enforceable in accordance with their terms, and that nothing in the charter, statutory and regulatory structure, or any contracts or other obligations or undertakings of the Authority would prohibit or conflict with the issuance, performance or enforcement of such obligations, except for bankruptcy or other similar laws affecting the rights of creditors generally. A copy of such opinion is attached as Exhibit I. Messrs. Gadsby and Hannah are approved by Developer as such bond counsel.

2.03 Conveyance to Developer. The Authority will convey the Project Area (including all buildings and improvements now thereon) and the Access to Developer by quitclaim deeds, in accordance with the terms and conditions set forth in this Agreement, pursuant to the schedule of purchase prices and the projected phases and Acquisition Dates shown on the Development Schedule attached as Exhibit J, as such dates may be extended in accordance with this Agreement.

In the event of fire or other casualty which damages any of the improvements in the Project Area, if such damage has not been repaired in full at the time for acquisition of such improvements, then, at the option of Developer (a) an adjustment shall be made to the purchase price with respect thereto corresponding to the nature and extent of the damage to such improvements, or (b) the Authority shall assign or pay over to Developer all proceeds of insurance with respect thereto.

The separate agreements which will be executed between the Authority and Developer as to each phase at the time of its conveyance will incorporate the restrictions on use of such phase contemplated hereby, will restate Developer's affirmative obligation to complete redevelopment in accordance with the Plans and Specifications therefor, will establish a procedure for modification of such Plans and Specifications, and will set forth Developer's covenant of non-discrimination.

2.04 Title. Subject to the terms and conditions herein and in the Exhibits set forth, the Authority will convey to the Developer good clear record and marketable title to each parcel in the Project Area (including all buildings and improvements now thereon) and the Access, subject only to the encumbrances, restrictions, easements and other matters described in Exhibit L. The Authority will take all steps necessary or appropriate to obtain and convey such title, and will make, at its sole expense, a confirmatory taking, simultaneously with acquisition of the Project Area, of any land or access thereto necessary or appropriate in the reasonable judgment of Developer's counsel to enable the Authority to convey such title. At or prior to the execution hereof there has been delivered to counsel for the Authority a memorandum setting forth the present defects in the record title and marketability thereof, and specifying the acts necessary for the Authority to cure said title defects.

2.05 Personal Property; Condition of Property; Permitted Uses.

Simultaneously with the delivery of each deed of a parcel in the Project Area, Authority will deliver to Developer a quitclaim bill of sale to all personalty now located on the parcel. During the term hereof the Authority will maintain the premises and the personalty in the same condition as they now are, reasonable wear and tear excepted, and shall not remove any

fixtures or personal property therefrom except as is described in the attached Exhibit N. Any lease of any part of the Project Area will be cancellable on thirty (30) days written notice, and no use will be permitted thereon which would not be permitted under Section 4.04 hereof.

2.06 Retention of Easements to Project Area. If Authority earlier conveys any interest in the Access or the Project Area, it will retain for the benefit of the Project Area and Developer and its successors and assigns a general easement in perpetuity for the Access.

2.07 Pedestrian Easement. The Project Area will be subject to, and each deed conveying the same will provide for, a public non-exclusive pedestrian easement during daylight hours approximately twenty (20) feet in width, primarily along the water's edge, at the location shown on Exhibit O, and including parcels 1C, 2C, 3D, 3J, 4C and 4D in their entirety. Easements will also be given over parcel 2A from the Shipyard Park through the archway in Building 42 to 9th Street, from 9th Street over a sidewalk to parcel 2C, and over parcel 4E to First Avenue along the water's edge.

There shall also be granted over parcel 2B a non-exclusive pedestrian easement during daylight hours over such areas of said parcel 2B as shall not be occupied by buildings or other

structures. To the extent Townhouses are constructed on parcel 2B this easement will at such time terminate and be replaced by a corresponding easement over parcel 1B.

2.08 Public Ways. Authority warrants that no public ways exist within the Project Area or the Access. It is contemplated that public ways will be created in the Historic Monument Area and Recreational Parcel. Eighth, Ninth and Thirteenth Streets will be established by the City of Boston as public ways in the Project Area.

2.09 Further Assurances. To the extent it shall subsequently appear that additional acts, authorizations, approvals, findings or appropriations of funds shall be necessary or appropriate to clear title to the Project Area or the Access, or otherwise to carry out the purposes and agreements stated or contained in this Agreement, the Authority hereby covenants and agrees to perform or grant or to use its best efforts to obtain all such acts, authorizations, approvals, findings, appropriations of funds or otherwise.

2.10 Application of Notes to Purchase Price. The Authority and Developer agree that as parcels are acquired by Developer pursuant hereto, Authority will accept in payment of all cash

due with respect to each such parcel (after appropriate adjustments and credits as provided herein) Developer's cancellation of a corresponding dollar principal amount of the Notes.

### ARTICLE III

#### DEVELOPMENT PROGRAM

3.01 Approval of Development Program. The Authority acknowledges receipt of and hereby approves the Development Program for the Project (a copy of which is annexed hereto as Exhibit P). The Authority recognizes that in undertaking the Development Program, Developer will be proceeding in reliance upon prompt and good faith completion of the Public Improvements by the Authority and the performance of the other obligations of the Authority set forth in this Agreement. The Authority acknowledges that design review has been commenced and design is thus far satisfactory and in accordance with the Plan as follows:

<u>Parcel Number</u>	<u>Building Identification</u>	<u>Design Review Status</u>
1A	Building 197 (Rehabilitation)	Schematic
1B <sub>1</sub>	Pier 5	Schematic
1B <sup>1</sup>	Water Adjacent to Piers 5 & 6	Schematic
1C	Waterfront Pedestrian Area	Schematic
2A	Building 40/42 (Rehabilitation)	Final Plans and Specifications
2B	Pier 6	Schematic

2B <sup>1</sup>	Water Adjacent to Piers 6 & 7	Schematic
2C	Waterfront Pedestrian Area	Final Plans and Specifications
3A	Building 103 (Rehabilitation)	Schematic
3B <sup>1</sup>	Pier 7	Schematic
3B <sup>1</sup>	Water Adjacent to Piers 7 & 8	Schematic
3C <sup>1</sup>	Pier 8	Schematic
3C <sup>1</sup>	Water Adjacent to Piers 8 & 9 - Marina	Schematic
3D	Waterfront Pedestrian Park	Schematic
3E	Shipway One	Schematic
3F	Shipway Open Space	Schematic
3G	Waterfront Pedestrian Area	Schematic
3H	Shipway Two	Schematic
3I	Building 104 (Rehabilitation)	Schematic
3J	Waterfront Pedestrian Area	Schematic
4A	Midrise Site	Schematic
4B	Pier 9/10 Area	Schematic
4C	Waterfront Pedestrian Area	Schematic
4D	Waterfront Pedestrian Area	Schematic
4E	Access Road and Waterfront Pedestrian Area	Schematic

Exhibit P describes and in some cases contains plans showing the currently approved stage of design review for each Phase.

### 3.02 Parcels for Which No Development Program Has Yet Been Established.

A. The parties will use reasonable efforts to establish development programs for Townhouses on Piers 5 and 7 (or 6 if Pier 5 is not feasible) if Developer notifies the Authority that such development is feasible. In the event of Design Approval and Developer's election to build such Townhouses it shall pay Authority for development rights the amounts set forth in Exhibit J.

B. In view of the fact that no Development Program for the Hotel Site (Parcel 5) has yet been established, the parties agree as follows:

(i) For a period of Five (5) years from the date hereof, the Authority and Developer will work together affirmatively and in good faith to establish an acceptable design for this parcel, and to incorporate the same into the Development Program. If a mutually acceptable Development Program for the parcel is established, within such period, Developer shall, if it wishes to proceed, submit its proposal for redevelopment within four (4) months and simultaneously allocate \$150,000 of the Notes issued pursuant to Section 2.02 hereof as a deposit toward the purchase price of the parcel and shall agree that the same are to be forfeitable by cancellation in the event that Developer fails to acquire and complete redevelopment of the parcel in accordance with the Development after approval of its design by Authority and satisfaction of all other conditions precedent to its acquisition of the parcel, as more particularly described herein.

(ii) Upon submission of Developer's proposal for redevelopment, Design Review on such parcel shall proceed in accordance with the terms hereof for no more than three

(3) years unless extended at Developer's option, exercisable by written notice to the Authority, as follows:

(a) for no more than two additional one-year periods by written notice from Developer designating as an additional deposit \$25,000 of the outstanding principal amount of the Notes for each year of extension, or

(b) with no additional deposit, for such additional period of time as may be necessary for the Authority to complete redevelopment of at least eighty-five per cent (85%) of the floor area of buildings, and substantially all of the streets, utilities and other improvements, in the Historic Monument Parcel.

(iii) Upon Design Approval, Developer shall have the right to acquire and develop the parcel on or before the Projected Acquisition Date, extended at Developer's option as set forth in (ii)(a) and (b) above, at a price which shall be the lower of (a) present fair market value plus one-half of the increase between such present fair market value and the fair market value (determined by three appraisers, one each selected by the Authority and Developer and the third selected by the other two) as of the date Developer notifies Authority that it wishes to purchase the parcel pursuant to the terms hereof, or (b) the fair market value as of such date. The parties agree that promptly

this Agreement they will establish the present fair market value of the Parcel as of the date of this document in accordance with the aforesaid procedure. The price to be paid by Developer pursuant hereto has been established in recognition of the fact that Developer's efforts in redeveloping the Project, and Authority's efforts in redeveloping the Historic Monument Parcel and in creating the Shipyard Park and other Public Improvements, will contribute approximately equally to any appreciation in value of the land henceforth. Such parcel shall be conveyed to Developer pursuant to Section 2.03 hereof and in accordance with and subject to all other terms and conditions of this Agreement, at the price set forth herein. The Projected Acquisition Date shall be a date within thirty (30) days of receipt of written notice from Developer that all conditions precedent to its obligation to acquire the Parcel have been met, but no later than June 30, 1986, with possible extensions described herein and in Section 3.01 hereof.

(iv) If the parties fail within five (5) years to establish a mutually acceptable Development Program for the Hotel Site as set forth above, then from this date until six (6) months after written notice of the Authority's completion of a Development Program for such parcel (a copy of which must be sent by registered mail to Developer in

order to start the three-year period running), Developer shall have the continuing and exclusive right to submit a plan for redevelopment in accordance with such Development Program.

(v) If Developer fails to submit a plan for redevelopment within the six-month period described in (iv) above, it shall thereafter have no further exclusive rights to submit, provided that the Authority effects no substantial change in such Development Program. Written notice of all changes in the Development Program for the Motel Site shall be sent by registered mail to Developer, and in the event such changes are substantial Developer shall again have the exclusive right for six (6) months to submit its plan for redevelopment as aforesaid.

(vi) The Authority agrees that any such submission will be processed in good faith and in all respects in accordance with the terms of this Agreement, and that upon Design Approval Developer shall have the right to acquire and develop the parcel at the price and on the terms set forth herein even if the Acquisition Date is beyond that described in (iii) hereof. Moreover, if for any reason except the Authority's bad faith refusal to proceed with Design Review, Design Approval has not occurred within twelve (12) years of the date hereof, Developer shall have no further rights under this paragraph 3B.

(vii) All deposits designated pursuant to the terms hereto shall be applicable as credits to the purchase price of the parcel.

(viii) In the event Developer has submitted a plan for redevelopment which is consistent with the Development Program and thereafter proceeds with Design Review consistently with such original plan, but if for any reason the design is not approved, or if the Authority refuses or is unable to convey the parcel to Developer, or if any condition precedent to Developer's obligation to purchase described in Section 11.01 hereof shall not have been met, then any agreement to cancel any portion of the Notes in forfeiture of designated deposits shall immediately be and become void at the option of Developer exercisable by written notice thereof to the Authority from Developer and the obligations evidenced by the Notes shall continue in full force and effect.

3.03 Design Review Process. So long as this Agreement has not been terminated by reason of an event of default in accordance with Article XII or pursuant to Section 11.03, the Project shall proceed only in accordance with the Development Program and plans and specifications that have been approved pursuant to the Design Review process set forth in Exhibit Q annexed hereto supplemented as follows:

- (a) All submissions shall be consistent with the Development Program.
- (b) All submissions shall be made by Developer to the Director of the Authority, his successor, or any person designated by him in writing and receipts for such submissions and notices shall be obtained from or on behalf of the Authority. Developer may rely upon any communication received from the Authority as being duly approved and executed on behalf of the Authority as long as the same is signed by the Director of the Authority or his designee.
- (c) Not later than thirty (30) working days after submission by Developer of any materials which require approval in accordance with the Design Review process, the Authority shall either approve such materials or notify Developer in writing of the specific respects in which it finds such materials to be unacceptable. If the Authority does not notify the Developer in writing within said thirty (30) day period of all specific respects in which the same is unacceptable, such materials shall be treated as having been approved by the Authority, as will all design elements within such submission which are not so specified as

unacceptable. In respect to any specific matters of which the Authority disapproves, Developer shall, within thirty (30) working days (or such additional time as may be requested by Developer and reasonably approved by Authority) after Developer receives written notice of such disapproval, resubmit appropriate material, altered in an effort to remove the basis for disapproval. All resubmissions and subsequent approvals or disapprovals thereof shall be made and given in accordance with the procedure hereinabove provided for the original submission, until the relevant materials shall be approved or shall be treated as having been approved by the Authority as set forth above or until this Agreement has been terminated pursuant to any party's rights hereunder.

- (d) In connection with the foregoing, the parties contemplate and agree that submission and review of design material will be a continuous process, with the parties working cooperatively and expeditiously in good faith with respect to the design of the Project.
- (e) Either party may notify the other that it deems any action of submission or disapproval unreasonable or in

bad faith, describing the consequences of such action and requesting extension of the Development Schedule or accelerated review of the submission to ameliorate such consequences. Failure to give written notice within thirty (30) days of any such action shall be deemed acknowledgment of the reasonableness thereof. Failure of written protest of any notice within ten (10) days thereof shall constitute acquiescence to the requested relief.

3.04 Alterations. Developer shall not make or permit to be made any substantial alteration of, addition to or change in the exterior facade (which shall include, without limitation, entrance locations, materials, windows and cornices forming a part of such facade) or the landscaping, other exterior features, or major interior design elements of the improvements approved and to be rehabilitated or constructed in accordance with the Development Program without the prior consent of the Authority. The Authority hereby approves the proposed changes in buildings 40, 42, 103, 104 and 197 as evidenced by the plans described in Exhibit R. Any request for such consent shall be accompanied by plans and specifications submitted to the Authority in accordance with the Design Review process, but upon any reasonable disapproval thereof by the Authority, Developer shall have no right, within six (6) months after such disapproval, to

resubmit the same for approval unless so permitted by the Authority.

3.05 Development Schedule. In accordance with the Development Schedule set forth in Exhibit J annexed hereto and subject to the conditions herein set forth, Developer shall acquire Phase 1 and commence construction of Buildings 40 and 42 in Phase 1 (as described in Exhibit J of the Project) on May 15, 1978 or such later date as shall be no less than thirty (30) days after Developer has acquired title to Phase 1 pursuant to the terms hereof.

Subsequent acquisition and development shall be performed in accordance with the Development Schedule (Exhibit J), as the same may be affected or governed by the terms and conditions of this Agreement.

3.06 Extension of Development Schedule. If at any time Developer shall determine that economic conditions do not permit the commencement of construction of any phase subsequent to Phase 1, Developer may extend for a maximum of three (3) years the date for acquisition of such phase, by giving written notice to the Authority at least three (3) months prior to the projected Acquisition Date and designating for cancellations aforesaid twenty-five thousand (\$25,000) dollars per extension

year principal amount of the Notes as an additional deposit. All deposits so designated shall be applicable as credits to the purchase price of the land next conveyed to Developer pursuant to this Agreement. If the Acquisition Date of any phase is extended pursuant to any provision of this Agreement, the Development Schedule for all other phases shall be automatically extended correspondingly upon the terms and conditions set forth herein. Additionally, it is agreed that in the event the Acquisition Date of any phase is extended pursuant hereto to a time when, because of the projected construction period for such phase, the completion date of such phase would materially and adversely affect the marketing of such phase, a further extension of the Development Schedule for such reasonable time as is necessary to meet marketing requirements shall be similarly effected. In no event, however, may the Development Schedule for the entire Project be extended more than three (3) years in the aggregate without the specific written approval of the Director of the Authority.

3.07 Phasing. The parties agree that the Project may be acquired and developed in one or more phases in accordance with Exhibit J annexed hereto, but nothing contained in this Agreement shall obligate the Developer to acquire or commence construction of any portion of the Project other than Phase 1, it being specifically understood that acquisition and construction of subsequent phases is at the option of Developer, subject

only to its performance in accordance with the Development Schedule. Any phase after Phase 1, including the hotel if acquired by Developer pursuant hereto, may be acquired or commenced at the time for acquisition or commencement of any other phase in substitution therefor (as the same may be extended or postponed as provided herein), in which case Developer shall be deemed in compliance with the Development Schedule, which shall be amended to substitute such phases acquired or commenced or to be acquired or commenced in such varied sequence.

Acquisition or commencement of any phase or element thereof may be accelerated at Developer's option without any acceleration of or effect on the balance of the Development Schedule.

3.08 Diligent Prosecution. Subject to Sections 2.03 and 3.05, in all events the Developer shall diligently commence Buildings 40 and 42 in Phase 1 and shall diligently prosecute the construction in a good and workmanlike manner and shall keep the Authority advised of matters which may affect the timing of performance of its obligations hereunder.

3.09 Certificate of Completion. Promptly upon substantial completion of Buildings 40 and 42 in accordance with the approved final working drawings and specifications, the Authority will furnish Developer with an appropriate instrument so certifying.

Such instrument shall be in recordable form and shall be a conclusive determination of satisfaction of all agreements herein contained on the part of the Developer relative to construction of Buildings 40 and 42. A similar certificate shall be issued upon Developer's substantial completion of each subsequent phase of the Project.

3.10 Local Employment. In connection with the development of the Project Developer will proceed in good faith as to matters within its control to encourage the employment of Charlestown residents during the development period. Consistent with this undertaking and subject in all respects to Federal and State Non-discrimination laws and "Affirmative Action" Plans, Developer will notify the City of Boston employment office in advance of the existance of job opportunities which it intends to establish at the Project, stating its preference for local residents, and will work dilligently and in good faith with such Agency to provide the maximum reasonably possible number of jobs for local residents.

#### ARTICLE IV

##### PUBLIC IMPROVEMENTS PROGRAM: DESIGN OF SURROUNDING AREA

4.01 Public Improvements. The Public Improvements shall be undertaken by the Authority at its sole cost and expense.

Although the Public Improvements have been determined by the Authority to be in the public interest apart from the Project, Developer recognizes that in undertaking the Public Improvements the Authority will be proceeding in reliance, in part, upon faithful and prompt performance by Developer of its obligations hereunder. Correspondingly, the Authority affirms that all necessary and appropriate funding for such Public Improvements has been appropriated and set aside as set forth in the attached Exhibit S.

#### 4.02 Streets, Access, Betterments, Improvements and Utilities.

The Authority shall construct or renovate the streets (including access to the Project Area through the Recreational and Historic Monument Parcels), betterments and improvements (including sidewalks and street lights) and utilities described in the attached Exhibit S and more particularly described in the plans and specifications listed or incorporated therein, and will maintain the same in good operating condition for the useful life of the improvements to be made by Developer pursuant hereto or in each case until the same is conveyed to a public utility or to the City of Boston as public property. To the extent such plans and specifications are not yet completed, the Authority and Developer will cooperate in the design and instal-

lation of such streets and utility systems, all parties recognizing the need of the Project for timely construction of adequate, efficient and aesthetically pleasing access and properly functioning utility systems of full capacity to service the projected needs of the Project, including the execution of necessary or appropriate easements or agreements with respect thereto.

4.03 Public Park and Marina. The Authority shall construct the public park and marina adjacent to Building 42 in accordance with the plans and specifications entitled " \_\_\_\_\_ " dated \_\_\_\_\_, a copy of which is incorporated herein by reference, and will keep the same clean, orderly and free of public nuisances and will maintain the same in good operating condition, for the useful life of Developer's improvements. The Authority agrees that in connection with the operation of the marina it will not conduct or permit to be conducted the sale of fuel or any marine products, and agrees further that slip rentals will be limited in time sufficient to avoid competition with any marina included with the Project. Similarly, it is agreed that no vehicular access to the public marina is to be provided or obtained on or over any portion of the Project Area.

4.04 Design and Use of Surroundings. The Authority owns or controls the development rights to the balance of the Naval Shipyard not the subject of this Agreement except the National

Park Parcel, and hereby agrees (a) to withhold approval of the development of any improvements within such area which would materially adversely affect the Project for any reason including noise, odors, fumes or inharmonious architectural treatment or land use, (b) to permit only such uses and development which are consistent with the design guidelines attached hereto as Exhibit T, and (c) to encourage and promote the prompt development of the balance of such area for uses and occupancies harmonious with those of the Project, including without limitation public recreation, public parking, and artistic, historic and educational uses. The Authority hereby agrees that no amendment to the existing redevelopment plan for the Charlestown Naval Shipyard, nor any programs, regulations or guidelines now promulgated pursuant thereto, will be effected or modified without prior written notification to Developer offering it the prior opportunity to be heard. The Authority's obligations hereunder will be imposed upon grantees or developers of such property by deed restriction or restrictive covenant in leases or contracts, as the case may require.

4.05 Construction Schedule. All steps relative to design, land acquisition, funding, construction and other matters in connection with the Public Improvements and the Recreational Parcel shall be undertaken by the Authority in accordance with the schedule set forth in Exhibit U annexed hereto. The Authority

shall diligently prosecute the same to completion in a good and workmanlike manner and shall keep Developer advised of matters which may affect the timing of performance of their obligations hereunder.

4.06 Construction Coordination; Early Access. During all phases of construction, the Authority will make available (a) reasonable access for Developer's machinery, equipment, workmen, agents and prospective residents, and (b) public utilities consistent with the reasonable needs of Developer and its contractors. Further, all work undertaken by Developer in connection with the Development Program and the Authority in connection with the Public Improvements, the Recreational Parcel and the Historic Monument Parcel shall be suitably coordinated and accomplished in such manner as to cause the least possible inconvenience and interference with each other's activities. At any time after the execution hereof, Developer and its agents, contractors and representatives shall have the right to enter the Project Area for surveys, test borings, and any and all other reasonable activity preparatory to commencement of rehabilitation.

4.07 Public Transportation and Vehicular Access. The Authority will use reasonable efforts to promote an adequate system of efficient public transportation and pedestrian and vehicular access to the Project, including without limitation:

(a) Obtaining from the Massachusetts Bay Transportation Authority a commitment for adequate bus service or other public transportation to the site.

(b) Coordinating with the Massachusetts Public Works Department and other appropriate authorities the relocation of Chelsea and Water Streets adjacent to the Naval Shipyard to provide for direct access, easterly of the Mystic River Bridge, to Gates 4 and 5 from City Square and the Central Artery off-ramp, and for compatible grades and alignments of streets and ways. It shall be a condition precedent to Developer's obligation to proceed hereunder that on or before May 15, 1978 it shall receive evidence reasonably satisfactory to it that such relocation will be satisfactorily accomplished prior to April 15, 1979, the date set for commencement of marketing for Buildings 40 and 42. It is understood that access to the Project or portions thereof solely through Gates 4 and 5 is unacceptable to Developer unless and until such relocation of Chelsea and Water Streets is complete, and until such time access and title will not be deemed satisfactory hereunder unless an agreement satisfactory to Developer with respect to access through Gate 1 is in effect, binding on National Park Service, and enforceable by Developer in accordance with its terms. If such conditions are not met the Development Schedule and Acquisition dates shall be extended correspondingly.

## ARTICLE V

### ZONING AND LAND USE

5.01 Zoning and Land Use of Project Area. The Project Area shall be governed by the Plan. The Project Area in its entirety shall be governed by the Code as now in force or hereafter amended. If it is necessary to secure amendments, variances or deviations to or under the Plan or the Code in order to permit construction and use of the Project to proceed in accordance with the Development Program, the Authority shall exercise its best efforts to secure any such amendments, variances or deviations and shall cooperate with Developer in any efforts related thereto. In this regard, the Authority and Developer have determined that the amendments, variances and deviations listed in Exhibit V will be necessary to permit construction of the phases described therein, and the Authority knows of no legal, public policy or other reason why it may not support Developer's request for the same at any public hearing or other administrative proceeding with respect thereto.

5.02 Zoning of Adjacent Parcels. In recognition of the fact that design of the Project confers benefits on adjacent parcels, the Authority shall:

- (a) Cooperate with Developer in exploring possible changes to the Code relative to such parcels with the objective of providing zoning applicable thereto which will encourage development thereof compatible with the design objectives of the Project, and
- (b) not propose or support any changes to or variances from the Code affecting the zoning applicable to such parcels without prior written notice to Developer.

5.03 Elderly Housing. The plan provides for the creation of 10% of all residential development within Charlestown Navy Yard as elderly housing. The parties agree to cooperate in good faith to accomplish this goal. Developer will use all reasonable efforts to obtain subsidies and other appropriate benefits necessary or appropriate to develop elderly housing in the Project, either as individual buildings or as scattered elderly apartments throughout the Project. To the extent subsidies are not available and the City is unwilling or unable to provide other appropriate subsidies through real property tax reduction or by the mechanism of Chapter 121A or its equivalent, then the obligation to provide the elderly housing provided by the plan will rest with the Authority as the owner of, and entity with development control over, the Historic Monument Parcel. The Authority agrees not to take steps inconsistent with this possible

obligation as it designs and effectuates the development program for the Historic Monument Parcel.

## ARTICLE VI

### TAXATION

6.01 Rental Property. Developer has requested that all rental property (including land and buildings and/or condominium interests for marinas, restaurants and retail space) in the Project owned by Developer or its successors and assigns be exempt from taxation pursuant to Chapter 121A of the Massachusetts General Laws, and that the City and Developer enter into an agreement with respect thereto substantially identical in form and substance to the Agreement attached hereto as Exhibit W. It is a condition precedent to Developer's obligations to proceed hereunder that the City and the Authority will by the Acquisition Date for Phase 1 have made all necessary or appropriate findings to effect the same all applicable appeal periods shall have expired, and the execution of all such agreements will have been duly authorized and accomplished by such date.

6.02 Private Residential Property. Any residential town houses and condominium or cooperative units owned by persons not affiliated with Developer will be taxed in accordance with

prevailing City assessment and taxation practices for comparable improvements elsewhere in Boston.

## ARTICLE VII

### ASSIGNMENT

7.01 Selection of Developer. The parties are entering this Agreement to permit and encourage the development of the Project Area in accordance with the terms hereof and not to permit speculation in landholding. Developer acknowledges that, in view of:

- (a) The importance of the undertakings set forth herein to the general welfare of the community;
- (b) the substantial financing and other public aids that have been and/or will be made available by law, the City and the Authority for the purpose of making such undertakings possible;
- (c) the importance of the identity of the parties in control of the Developer and the Project; and

- (d) the fact that a transfer of any controlling interest in the legal or beneficial ownership in the Developer or any other act or transaction involving or resulting in a significant change in the control of Developer is for practical purposes a transfer or disposition of the interest in the Project then owned by Developer;

the qualifications and identity of Developer are of particular concern to the community, the Authority and the City. Developer further recognizes that it is because of such qualifications and identity that the Authority is entering into this Agreement, and, in so doing, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed by it.

7.02 Prohibited Transfers. For the reasons set forth in Section 7.01 hereof and except as otherwise provided herein, it is hereby agreed that commencing on the date hereof and continuing until the date of issuance by the Authority of a Certificate of Completion with respect to each phase of the Project, Developer shall not:

- (a) Transfer (by assignment or otherwise) all or any part of its rights under this Agreement or of its interest in such phase to any person (including but not limited

to, any partnership, joint venture or corporation) unless the consent thereto of the Authority has first been obtained or established herein; or

- (b) Transfer or change the controlling legal or beneficial interests in Developer (or any successor entity to the Developer permitted hereunder) with respect to such phase by sale, pledge or otherwise unless the consent thereto of the Authority has been first obtained or established herein.

Notwithstanding the foregoing, a sale, lease or any other transfer or assignment of any portion of the Project Area or of any of Developer's rights hereunder to a partnership or joint venture of which the Developer is a controlling general partner under Massachusetts law, or the admission thereto of any additional partners or joint venturers, or to a corporate affiliate of either or both of the Joint Venturers of Developer, does not require prior Authority consent. Developer may not, however, subsequently convey its interest as such general partner or in such affiliate without such consent. Such partnership, joint venture or affiliate may hold title to the Project or portions thereof in a nominee trust or corporation, but shall not without such consent convey the beneficial interest in such nominee.

Furthermore, any portion of the Project Area designed for town house or condominium development or similar ownership in the nature of fee simple absolute or by long-term lease, shall upon issuance of a Certificate of Completion for each such unit be deemed to have been thereby approved by the Authority for dedication to condominium ownership pursuant to M.G.L. ch. 183A and/or subsequent sale or lease to third parties without the need of specific approval in any instance.

Notwithstanding the foregoing, a sale, lease or any other transfer or assignment of any portion of the Project Area or of any of Developer's rights hereunder to a partnership or joint venture of which the Developer is a controlling general partner under Massachusetts law, or the admission thereto of any additional partners or joint venturers, does not require prior Authority consent. Developer may not, however, subsequently convey its interest as such general partner without such consent. Such partnership or joint venture may hold title to the Project or portions thereof in a nominee trust or corporation, but shall not without such consent convey the beneficial interest in such nominee.

Furthermore, any portion of the Project Area designed for town house or condominium development or similar ownership in

the nature of fee simple absolute or by long-term lease, shall upon issuance of a Certificate of Completion for each such unit be deemed to have been thereby approved by the Authority for dedication to condominium ownership pursuant to M.G.L. ch. 183A and/or subsequent sale or lease to third parties without the need of specific approval in any instance.

7.03 Permitted Transfers. The restrictions set forth in Section 7.02 hereof shall not apply to any transfer:

- (a) of any phase of the Project after the completion of such phase;
- (b) of any leasehold interest in the Project or any part thereof following the completion of the improvements subject to such leasehold interest; provided, however, that prior to completion of the phase, no transfer of a leasehold interest comprising more than one-third (1/3) of the gross leaseable area of the phase and providing for a term of more than thirty (30) years shall be made without the prior consent of the Authority;

- (c) of any interest in the Project or any part thereof as security to any institutional lender providing financing therefor; or for any phase, or portion of a phase;
- (d) of any rights of Developer under this Agreement with respect to any transfer permitted hereby;
- (e) of any legal or beneficial interest in the joint venturers of Developer among themselves or among any affiliates of either such joint venturer, or to the admission of any additional joint venturer(s);
- (f) of any transfer of any interest in the Project or any part thereof for utility or like easements necessary to permit the construction and use of the Project or any phase, or portion of a phase.

7.04 Authority's Consent. Where the consent of the Authority to any transfer is required hereby, Developer shall notify the Authority of all parties to whom such transfer is proposed to be made, and such notice shall provide reasonably sufficient information to enable the Authority to evaluate the acceptability of the proposed transferee. The Authority, at any time within thirty (30) days after the giving of such notice of the

identity of any such party, shall have the right to notify Developer that it objects to the proposed transfer to such party, and the Authority shall in such notice, specify reasonable grounds for such objection (no such objection shall be made if no reasonable grounds exist). If such objection shall be made by the Authority, such party shall not be a transferee without the subsequent consent of the Authority. If objection is not made by the Authority within such thirty (30) day period or such additional period of time as may be requested by the Authority and reasonably approved by Developer, the proposed transfer shall be deemed to be approved by the Authority.

7.05 Excepted Transfers. Nothing herein shall give the Authority any right or power to control the transfer of any stock, shares or other interests in any corporation the stock of which is traded on a major stock exchange, mutual insurance company or any other entity the ownership interests of which are owned generally by the public at large.

## ARTICLE VIII

### CONSULTANTS

8.01 The Authority acknowledges and hereby approves the retention of Anderson Notter Finegold, Inc. as architects and

planning consultants, and Sasaki Associates as land planners, for Phase 1 of the Project and for such additional portions of the Project as Developer shall elect. Authority will not unreasonably withhold its approval of the retention of any other respected architect or planner for other phases of the Project.

## ARTICLE IX

### EXHIBITS

9.01 Exhibits. The parties hereto acknowledge and agree that all of the Exhibits hereto are presently in form and substance acceptable to them and that, except as set forth herein, as to such of the Exhibits as require execution on a future date, all authorizations, findings, actions and approvals (including the appropriation and setting aside of all funds necessary to accomplish the purposes herein described) which, as to each party, must be given or made by various boards and official agencies as conditions precedent to the negotiations or execution or performance thereof have been given and will remain in full force and effect on such date. To the extent any provisions of any agreement hereafter executed pursuant to this Agreement are inconsistent with the provisions of this Agreement, the terms of such agreements shall govern, but such

agreements shall be interpreted if possible to implement the spirit of this agreement, and shall not be used to frustrate the purposes set forth herein.

## ARTICLE X

### REPRESENTATIONS AND WARRANTIES

10.01 Representations and Warranties. The parties hereto each represent and warrant as follows with respect to themselves:

1. The execution hereof and the performance of the obligations herein described and of any acts which may be reasonably necessary or appropriate to accomplish the purposes set forth herein, has been duly authorized by each of the respective parties.

2. This Agreement and the agreements to be executed pursuant hereto are or will be upon execution the duly executed, legal, valid and binding obligations of each of the respective parties, enforceable in accordance with their terms except as the same may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

3. This Agreement and the agreements to be executed pursuant hereto are not in conflict with any joint venture agreement, charter, statutory authority, or any indenture agreement or other instrument to which any party hereunder is a party or by which any party hereunder is bound.

4. Except as specifically set forth herein, no consent, approval, authorization of, funding by, or registration with, any federal, state or local governmental authority is required in connection with the execution and delivery hereof, or the performance of any obligations hereunder, by any party hereto.

## ARTICLE XI

### CONDITIONS TO PARTIES' OBLIGATIONS

11.01 Developer's Conditions. It shall be a condition precedent to Developer's obligations to acquire and commence construction on each phase of the Project that, on the date for such events:

(a) Title to such phase shall be good clear of record and marketable and access shall be indefeasible as evidenced by the opinion of counsel for Developer or by a title insurance policy

reasonably satisfactory to Developer, either stating that title will be as aforesaid, subject only to exceptions acceptable to Developer; and

(b) All licenses, permits, approvals (including Design Review), environmental reviews and all other necessary or appropriate actions of any federal, state or city authorities shall have been issued, granted or taken to enable acquisition, construction, rehabilitation and continued maintenance and operation of the land and improvements in such phase; and

(c) Developer shall have obtained written commitments for construction and permanent financing of all improvements in such phase, in form and substance reasonably satisfactory to Developer; and

(d) The phase shall have been determined to be exempt from real property taxation and the amendments, variances, exceptions and deviations described in Section 5.01 and Exhibit V shall have been granted and remain in full force and effect. The agreement concerning certain other payments, attached as Exhibit W, shall be in full force and effect with respect to all rental property contained within such phase; and

(e) To the extent such phase contains structures which are to be rehabilitated, assurances of the appropriate certification of the same as historic structures shall have issued and Developer shall be entitled, in the opinion of its counsel, to elect five-year amortization of all rehabilitation expenses thereon pursuant to §167(o) of the Internal Revenue Code, or any subsequently enacted equivalent; and

(f) The improvements located on such phase shall be in substantially the same condition they are now, reasonable wear and tear excepted; and

(g) The Authority shall not be in material default under any of its obligations hereunder (specifically including delay in constructing the Public Improvements), all of which must be completed prior to the scheduled acquisition of parcel 1A, and

(h) Developer shall have notified the Authority in writing that it elects to acquire such phase and commence construction thereon, setting forth a time and place for acquisition of the phase and an anticipated date for commencement of construction, and

(i) All other conditions to Developer's obligations to proceed hereunder shall have been met.

11.02 Authority's Condition. It shall be a condition precedent to the obligations of the Authority to convey title to any phase or to take any additional action required with respect to such phase, that, on the date for conveyance of such phase:

(a) Developer shall not be in material default under any of its obligations set forth herein; and

(b) with respect to all phases after Phase 1, Developer shall have given written notice of its intention to acquire and develop such phase at least three (3) months prior to the date for conveyance; and

(c) Developer shall have caused to be posted a suitable letter of credit or performance, labor and materials bond for completion of such phase; and

(d) with respect to the improvements contemplated for such Phase, final working drawings and specifications shall have been approved by the Authority in accordance with Section 3.03 hereof and Exhibit Q; and

(e) Developer shall have submitted an executed construction contract reasonably satisfactory to the Authority; and

(f) Developer shall have furnished evidence of commitments for mortgage financing reasonably satisfactory to the Authority; and

(g) Developer shall have obtained a building permit from the City of Boston Building Department and paid all application fees in connection therewith.

11.03 Termination or Postponement for Failure of Condition.

In the event that any condition set forth in Section 11.01 hereof (other than Developer's notice of acquisition) has not been fulfilled on or before the Projected Acquisition Date or the date for commencement of construction of any phase or such later date as may be reasonably requested by the Authority and approved by Developer, or such extended date as may be established pursuant to the terms hereof, Developer may, at its election, terminate this Agreement, postpone the time for fulfillment of such condition, postpone the Acquisition Date or the date for commencement of construction for such period of time as the Developer may deem reasonable, or waive the fulfillment of such condition. It is agreed that postponement may be for longer than the period by which Developer may have been delayed. For example, if a delay of two months means that Developer will be unable to complete construction of the phase in time for the most advantageous rental season, a postponement of ten to twelve

months may be appropriate. Postponement with respect to any phase shall automatically result in a corresponding extension of the scheduled dates for acquisition and commencement of development of each subsequent phase. Upon any such termination for failure of condition there shall forthwith be returned to Developer by the Authority all sums theretofore paid by Developer to the Authority hereunder with respect to uncompleted phases of the Project and, thereafter, this Agreement shall terminate and all further obligations of Developer hereunder, and those of any surety for Developer, shall cease.

## ARTICLE XII

### GOOD FAITH EXPENDITURES: DEFAULT: REMEDIES

12.01 Developer's Expenditures. Developer has to date expended substantial amounts for preliminary studies, professional fees, design drawings for Phase 1 and application and processing fees for the financing for Phase 1. The Authority recognizes that these funds have been expended in good faith to bring the Project to its present stage and should be recognized as being in the nature of a deposit to evidence Developer's good faith and intentions.

12.02 Event of Default. An event of default shall occur if either party fails in any material respect to observe or perform any covenant, agreement or obligation hereunder (including any obligation to proceed in good faith or to exercise best efforts), and shall fail to cure, correct or remedy such material default within a reasonable time (in view of the nature of the default, the then circumstances and the effect on the non-defaulting party of the length of the continuation of such default, but in no event less than fifteen (15) days) after written notice from the non-defaulting party specifying such default. It is specifically understood that no event of default hereunder shall exist until after (a) notice as aforesaid and (b) the expiration of the aforesaid reasonable time thereafter.

12.03 Default by the Developer. Subject to the rights of mortgagees provided in Section 12.05, if the Developer commits an event of default and an event of default on the part of the Authority is not then existing and no condition precedent to any obligation of Developer exists unwaived, the Authority may:

- (a) terminate this Agreement (except as hereinafter provided in Section 12.05 hereof) upon not less than thirty (30) days' written notice to Developer setting forth Developer's uncured default and stating that a

reasonable length of time has elapsed without cure, whereupon this Agreement shall terminate on the termination date therein set forth unless Developer's alleged default has been cured before such termination date; and

- (b) retain, at the time of such termination, all payments made hereunder; and
- (c) call upon any bond outstanding at the time of such termination.

12.04 Rights of Mortgagees. Any notices permitted or required to be given hereby by the Authority shall be given to any mortgagee which shall have provided notice to the Authority that it holds a mortgage on any part or all of the Project. Further, any such mortgagee shall not be obligated to perform any obligations under this Agreement or to construct or complete any part of the Project unless and until such mortgagee shall have elected specifically so to do in writing. In the event of any such election, such mortgagee shall be entitled to all of the privileges of Developer hereunder, and the Authority shall accept performance and compliance by such mortgagee of and with any term, covenant, agreement, provision, condition or limitation on the Developer's part to be kept, observed or performed

hereunder with the same force and effect as though kept, observed or performed by the Developer; and any mortgagee so electing and performing shall be liable and fully bound by the provisions of this Agreement.

12.05 Default by the Authority: Self-Help. If the Authority commits an event of default and an event of default on the part of the Developer is not then existing, the Developer may, in addition to any and all other remedies available to it hereunder or pursuant to law:

- (a) Seek specific performance by the Authority of its obligations hereunder (including, but not limited to, its obligations with respect to acquisition and conveyance of the Project Area and the Access and the construction of Public Improvements and the Recreational Parcel in accordance with Article IV); or
- (b) After fifteen (15) days prior written notice or within a lesser but reasonable period in the case of emergencies, cure such default for the account of the Authority and deduct the cost of such cure from any amounts then due or to become due from Developer to the Authority; or

(c) terminate this Agreement by thirty (30) days written notice to all parties, whereupon all obligations of Developer shall be null and void.

12.06 Remedies. Without limitation, the existence of an event of default, the reasonableness of notice given with respect thereto, the reasonableness of any action or judgment (or refusal to take any such action or make any such judgment) and the remedies sought on account thereof shall be subject to review by a court of competent jurisdiction.

#### ARTICLE XIII

##### MISCELLANEOUS

13.01 Governing Law. This Agreement is being executed and delivered in the Commonwealth of Massachusetts and shall be governed by and construed and interpreted in accordance with the laws thereof.

13.02 Captions and Headings. The captions and headings throughout this Agreement are for convenience and reference only, and they shall in no way be held or deemed to define, modify or add to the meaning, scope or intent of any provisions of this Agreement.

13.03 Consents and Approvals. Except as herein otherwise provided, whenever in this Agreement the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, delayed or qualified and shall be in writing, signed by an officer or agent, thereunto duly authorized, of the party granting such consent or giving such approval. The Authority recognizes that Developer is relying on the assumption that approval of the preliminary design concepts set forth herein necessarily implies that neither party foresees any legal procedural or practical barrier to the issuance of all such consents and approvals, nor to the granting or issuance of any licenses, permits, favorable reviews or findings necessary to the consummation of the Project. Final Designation with respect to each Phase of the Project shall be made as follows: Promptly after Design Approval by the Authority, the Board of the Authority shall review all material facts with respect to such Phase to determine, in the exercise of its reasonable judgment, whether Developer is in substantial compliance with the terms hereof. Upon such determination the Board shall Finally Designate Developer with respect to such Phase. The terms of this Agreement shall not be subject to reconsideration or renegotiation in the course of any such proceedings; it being understood that subsequent action of the Board shall be solely on the issue of substantial compliance herewith.

13.04 No Waiver. No assent, express or implied, by either party to any breach of or default in any term, covenant or condition herein contained on the part of the other to be performed or observed shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition hereof.

13.05 Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing, and shall be deemed to have been properly given if delivered by hand or sent by registered or certified United States mail, postage prepaid, return receipt requested, and

(1) if directed to the Authority addressed to it:

c/o Director  
Boston Redevelopment Authority  
City Hall  
Boston, Massachusetts 02201

(2) if directed to Developer addressed to it:

Dr. Alberto Marescotti, President  
Place Victoria - St. Jacques Co., Inc.  
Suite M100  
Place Victoria - P. O. Box 287  
Montreal PQ H4Z 1E8  
CANADA

Mr. Arturo L. Ressi di Cervia,  
Executive Vice President  
Icos Corporation of America  
Four West Fifty-Eighth Street  
New York, New York 10019

with a copy to:

Goodwin, Procter & Hoar  
28 State Street  
Boston, Massachusetts 02109  
Att: A. Jeffrey Dando, Esquire

or such other address as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, each party shall direct all sums payable to another party to said party's address for notice purposes.

13.06 Force Majeure. In the event that either party shall be unable timely to perform its obligations hereunder due to fire, earthquake, flood, explosion, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, or any other similar cause beyond its control, the time for such performance shall be extended for a period equal to the length of the delay caused thereby; provided, however, that any party hereto intending to avail itself of the provisions of this Section 13.06 shall give notice of such intent to the other parties hereto not more than fifteen (15) days from the date of occurrence of any such cause.

13.07 Invalidity of Provisions. In the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court, this Agreement shall be construed as if it did not contain such phrases, sentences, clauses or paragraphs.

13.08 Rights of Others. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto and their authorized successors and assigns, any rights or remedies under or by reason of this Agreement, but it is agreed that the provisions hereof shall be binding upon, and inure to the benefit of, the parties hereto and the successors and assigns contemplated herein.

13.09 Survival of Obligations. All of the obligations, representations, warranties and covenants made in this Agreement shall be deemed to have been relied upon by the party to which it was made and to be material and shall survive the execution and performance of any agreements related hereto to the extent that they are by their terms, or by a reasonable interpretation of the context, to be performed or observed or relied upon after the execution or performance of any such agreements.

13.10 Time of Essence. Time is of the essence of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually attempt to fulfill the conditions applicable to each of them.

13.11 Ownership of Developer. Developer hereby warrants and represents that the outstanding and issued shares of stock of its two joint venturers are owned as follows:

Immobiliare Boston, Inc.

Immobiliare Canada, Ltd.  
100%

Canopus, Inc.

Icos Corporation of America  
100%

13.12 Supplemental Documents. Recognizing that the implementation of the provisions hereof with respect to various actions of the parties hereto may require the execution of supplemental documents (including, without limitation, the preparation of a detailed survey with respect to the Project Area) the precise nature of which cannot now be anticipated, each of the parties agrees to assent to, execute and deliver such other and further documents as may be reasonably required by other parties hereto (or by any mortgagee) so long as such other and further documents are consistent with the terms and provisions hereof, shall not impose additional obligations on any party, shall not deprive any party of the privilege herein granted to it and shall be in furtherance of the intent and purposes of this Agreement.

13.13 Due Diligence and Good Faith. Both parties agree to pursue in good faith and with due diligence the purposes set forth and all act in furtherance thereof, specifically including all acts required of either party by the terms hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set

• their hands and seals as of the day and year first above written.

ATTEST:

BOSTON REDEVELOPMENT AUTHORITY

By \_\_\_\_\_

ATTEST:

IMMOBILIARE NEW ENGLAND

By \_\_\_\_\_

Approved as to form:

## LIST OF EXHIBITS

- A - Project Area, Access and Parcelization Plan including Buy Parcel Motel and Industrial Sites.
- B - Cooperation Agreement
- C - Agreement with GSA for Acquisition
- D - " " " for Acquisition of Historic Monument Parcel.
- E - Agreement with NPS for Access
- F - Plan of Recreational Parcel and Historic Monument Parcel
- G - Form of Notes
- H - Form of Mortgage Securing Notes
- I - Bond Counsel's Opinion
- J - Development Schedule
- L - Schedule of Encumbrances on the Project Area and the Access
- N - Schedule of Personal Property Which May be Removed from Project Area
- O - Plan of Public Pedestrian Easement
- P - Development Program
- Q - Design Review Process
- R - Plans for Building 40, 42, 103, 104, 197
- S - Appropriations for Public Improvements
- T - Design Guidelines for Historic Monument Parcel
- U - Development Schedule for Remainder of Naval Shipyard
- V - Schedule of Deviations
- W - 121A Agreement

EXHIBIT L

Schedule of Encumbrances

1. The daytime public pedestrian easements over those portions of the Project area more particularly described in Exhibit O.
2. Rights to install, improve and maintain as public streets Eighth, Ninth and Thirteenth Streets as shown on Exhibit A, and rights to install public utility systems therein prior to dedication as public ways.

EXHIBIT N

Schedule of Personal Property which may be removed from Project Area.

All non-structural, above-ground electrical wiring and equipment provided that any damage caused by such removal is simultaneously repaired by the Authority.

EXHIBIT J

DEVELOPMENT SCHEDULE  
(Immobiliare New England Activities)

Acquisition of the Phases of the Project are proposed to be accomplished in accordance with the following timetable. The cash payment to be made for each Phase is set forth in a separate column entitled "ACQUISITION PRICE".

Commencement of Construction of each Phase shall occur no less than thirty (30) days after acquisition of such Phase. The Projected Acquisition Dates set forth herein are subject to extension in certain instances more particularly described in the Agreement.

<u>Phase</u>	<u>Projected Acquisition Date</u>	<u>Parcel Number</u>	<u>Parcel Description and Use</u>	<u>Acquisition Price</u>
I	April, 1978	2A	Building 40/42: 368-Unit apartment building; 362-car parking garage; and waterfront park	\$100,000
		2C	Public Pedestrian Walkway	\$ 1
IA	April, 1978	1B	Pier 5 Temporary Marina and Recreation Facility; Future Development of 66 townhouses	\$ 1
		1B1	Water area between Piers 5 & 6 - marina	\$ 1
		2B	Pier 6 - marina and public pedestrian easement	\$ 1
		2B1	Water area between Piers 6 & 7 - marina	\$ 1
II	June, 1979	1A	Building 197: 132-Unit apartment complex; 17,000 square foot retail area; 5,000 square foot rooftop restaurant; and 158 car parking garage	\$165,000
		1C	Public Pedestrian Walkway	\$ 1

III	June, 1980	3A	Building 103: 102-Unit apartment renovation	\$200,000
		3D	Public Pedestrian Park	\$ 1
III-A	June, 1980	3B	Pier 7: Temporary Marina; possible future 70-unit townhouse development	\$ 1
		3B1	Water between Pier 7 & 8; marina use	\$ 1
IV	June, 1982	3E	Shipway One Townhouses - 25 units; Recreation and storage below	\$37,500 at time of acquisition plus an amount, at time any unit is conveyed to a third party equal to the excess of (a) 2-1/2% of the arm's length sale price of such unit (exclusive of extras, change orders, etc.) over (b) \$1,500 per unit
		3F	Shipway Open Space Park	\$ 1
		3G	Public Pedestrian Walkway	\$ 1
IV-A	June, 1982	3C	Pier 8 - Marina	\$ 1
		3C1	Water Adjacent Piers 8 & 9 - Marina	\$ 1
V	June, 1983	3I	Building 104: 48 unit apartment renovation; 200 car garage and Recreation Facility	\$ 70,000

VI

June, 1984

3H	Shipway Two - 32 unit townhouse development; Recreation and storage below; Park	\$50,000 at time of acquisition plus an amount, at time any unit is conveyed to a third party equal to the excess of (a) 2-1/2% of the arm's length sale price of such unit (exclusive of extras, change orders, etc.) over (b) \$1,500 per unit
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3J	Public Pedestrian Walkway	\$ 1
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VII June, 1985

4B	Pier 9/10 Marina	\$ 1
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VIII June 1986

4A	384-unit midrise and townhouse complex with 339 car parking garage
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4C	Public Pedestrian Walkway
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4D	Public Pedestrian Walkway
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4E	Public Pedestrian Walkway and Private Access Road
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\$560,000 at acquisition plus an amount, at the time any townhouse is conveyed, equal to the excess of (a) 2-1/2% of the arm's length sale price of such unit (exclusive of extras) over (b) \$1,500/unit

\*Since Piers 5, 6 and 7 are designed only for recreational use, Developer must pay to Authority, if it elects to develop such Piers, an amount equal to \$1,500 per unit at the time building permits are issued with respect to such unit, and thereafter at the time such unit is conveyed to a third party, an amount equal to the excess of (a) 2-1/2% of the arm's length sale price of such unit (exclusive of extras, change orders, etc) over (b) \$1,500 per unit.

